IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

WP(C).No. 20058 of 2007(K)

PETITIONER:

N.JAYASANKAR, MANAGING DIRECTOR,
CHELUR ENGINEERING INDUSTRIES(P)LTD.,
M.G.ROAD, KOCHI-16.

BY ADV. SRI.SHAJI P.CHALY

RESPONDENTS:

1. CONTROLLING AUTHORITY,
   UNDER THE PAYMENT OF GRATUITY ACT, 1972
   AND THE DISTRICT LABOUR OFFICER,
   ERNAKULAM.

2. C.K.BAHULEYAN,
   CHERIYEDATH HOUSE,
   JANATHA ROAD,
   KOCHI-19.

G.P. SHRI.I.V.PRAMOD.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S.SIRI JAGAN, J.

==========

W.P.(C).No.20058 of 2007

==========

Dated this the 29th day of June, 2007

J U D G M E N T

The petitioner was the employer in Gratuity Case No.4/2003 before the Controlling Authority under the Payment of Gratuity Act and the District Labour Officer, Ernakulam. The gratuity case was decided in favour of the employee by Ext.P2 order on 4.10.2005. The petitioner filed an application for reviewing that order on 2.2.2007. The same was rejected by Ext.P1 order. The petitioner challenges Exts.P1 and P2 orders.

2. I find that the petitioner filed the review petition itself with a petition to condone delay of 456 days. The explanation for the delay is contained in paragraph 2 of the application, which is produced as Ext.P4. Paragraph 2 reads as under:

> "2. The above review petition is filed to review the order dated 04.10.2005 passed by the Honourable Controlling Authority in G.C.4/2003. The application was considered by the Honourable Controlling Authority and was decided exparte. The petitioner has filed objection to the claim of the respondent raised in the application on 05.04.2003 contending that since the unit is not coming under the Payment of Gratuity Act the respondent herein is not entitled to any gratuity. The petitioner has not received any communication in this regard after that date. The petitioner company was passing through a period of heavy competition in the field and thereupon was facing heavy financial crisis. In that circumstance, I could not follow up the proceedings before this

> Authority. When only recently I have received a notice, I recollected and realised the situation. In fact the company is not liable to pay any gratuity as it had only employees strength of five employees through out. The documents produced will establish the case of the petitioner company. The delay caused in filing the review petition is not wilful. There is no wilful negligence or latches on my part to file the petition within time. The same has happened due to reasons beyond my control. If the delay in filing the application is not condoned, it will cause irreparable loss and injury to me/petitioner company."

3. I am not satisfied that the petitioner has explained the delay satisfactorily. Further, after all these years, I do not think that a poor workman should be dragged to this court as well as the before the Controlling Authority for a rehearing of the case especially by exercising my discretionary jurisdiction under Article 226 of the Constitution of India. In the above circumstances, I do not find any merit in this writ petition and accordingly the same is dismissed. However, this decision shall not be taken as final decision regarding the applicability of the Payment of Gratuity Act to the petitioner's establishment and the petitioner would be free to take up that contention in other cases.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge.